

United States  
Circuit Court of Appeals  
For the Ninth Circuit. <sup>3</sup>

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O. KRAFT,

Appellant,

vs.

NATIONAL SURETY COMPANY, a corporation,  
H. P. SULLIVAN, E. H. BOYER and  
A. F. STOWE,

Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Territory of Alaska, Third Division.

FILED

MAY - 1 1934

PAUL P. O'BRIEN,

CLERK

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD.

Attorneys for Appellant, O. Kraft:

L. D. ROACH, Anchorage, Alaska,  
ARTHUR FRAME, Anchorage, Alaska,  
L. V. RAY, Seward, Alaska.

Attorney for Appellee, National Surety Company:

J. L. REED, Valdez, Alaska.

Attorneys for Appellee, H. P. Sullivan:

J. W. KEHOE, Seward, Alaska,  
DONOHOE & DIMOND, Valdez, Alaska.

Attorney for Appellees, E. H. Boyer and A. F.

Stowe:

J. W. KEHOE, Seward, Alaska.

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In the District Court for the Territory of Alaska,  
Third Division.

No. A. 643

O. KRAFT,

Plaintiff,

vs.

NATIONAL SURETY COMPANY, a corpora-  
tion, H. P. SULLIVAN, E. H. BOYER and  
A. F. STOWE,

Defendants.

AMENDED COMPLAINT.

Plaintiff, by leave of the court, files this his  
amended complaint and alleges:

## 1.

That at all the times hereinafter mentioned the above-named defendant H. P. Sullivan was the duly appointed, qualified and acting United States Marshal for the Territory of Alaska, Third Division; and the defendant A. F. Stowe was the duly appointed, qualified, and acting United States Commissioner and ex officio Justice of the Peace in and for the Kodiak Precinct, Territory of Alaska, Third Division; and the defendant E. H. Boyer was the duly appointed, qualified, and acting deputy United States Marshal in and for said Precinct, Territory and Division.

## 2.

That the National Surety Company is a foreign corporation organized under the laws of the state of New York and doing business within the Territory of Alaska, which said company was at all the times hereinafter mentioned, and now is, surety for the official bond of the defendant H. P. Sullivan as United States Marshal.

## 3.

That the plaintiff above named has for many years resided [1\*] in the town of Kodiak, Alaska, where he is now and for a long time past been engaged in the general mercantile business, including the buying and selling of furs. That plaintiff, for causes unknown to himself, has incurred the enmity and illwill of the defendants Sullivan, Boyer

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.

and Stowe, and that said defendants in order to injure, harass, oppress, and humiliate the plaintiff and bring him into public disgrace, corruptly and maliciously conspired, combined, confederated, and agreed together to falsely charge and accuse plaintiff of the crime of violation of the Alaska game laws, and also to convict and punish him for the aforesaid offence, which said conspiracy and prosecution they carried out maliciously and without probable cause in the following manner, to wit: That on the 15th day of March, 1928, the above named defendant A. F. Stowe came to plaintiff's store in said town of Kodiak, Alaska, and demanded that plaintiff allow him to inspect the books and records of his purchase of furs, and threatened plaintiff with arrest if he refused so to do. That at the same time, plaintiff refused to allow said defendant to inspect his records. That on the 16th day of March, 1928, pursuant to said conspiracy the defendant E. H. Boyer came to plaintiff's store in said town and demanded that plaintiff allow him to inspect the books and records of his purchase of furs, and upon plaintiff's refusing so to do informed this plaintiff that he was under arrest and compelled plaintiff, against his will, to go with him to the office of defendant Stowe and detained him until a complaint, entitled in the United States Commissioner's Court for the Territory of Alaska, Third Division, Kodiak Precinct, was prepared and signed by the said Boyer and sworn to before the said Stowe, charging this plaintiff with the violation of Regu-

lation 21 of the Alaska Game Laws, which said regulation is one adopted by the Secretary of Agriculture under the authority of the Alaska [2] Game Law and provides in substance that each fur farmer or fur dealer shall allow any member of the commission, any game warden, or any authorized employee of the United States Department of Agriculture, at seasonable hours to enter and inspect the premises where operations are being carried on under the said regulations and to inspect the books and records relating thereto. That a copy of said complaint is hereto attached, marked EXHIBIT A, and made a part of this complaint. That neither of said defendants was at any of the times herein mentioned, a member of the Alaska Game Commission, a game warden, or an authorized employee of the United States Department of Agriculture, and that neither of said defendants was entitled to inspect the books and records of plaintiff under the authority of said regulation or at all.

## 4.

That after said complaint had been made, a warrant for the arrest of plaintiff was issued by said Stowe, a copy of which is hereto attached, marked EXHIBIT B, and made a part of this complaint, and delivered to said Boyer, who then under color and by virtue of his office and official position read the same to this plaintiff. That plaintiff thereupon entered a plea of "not guilty", when plaintiff was released upon his furnishing cash bail, and his trial was set, by the defendant Stowe, for the fol-

lowing day, to wit: March 17, 1928, such trial to be had before the said Stowe as United States Commissioner and ex officio Justice of the Peace in the town of Kodiak, Alaska. That plaintiff was ready and appeared for trial at the time and place fixed therefor, but the trial of his said cause was postponed by said defendants until the 19th day of March, 1928. That upon said day plaintiff again appeared for trial when said action was again postponed until the 30th day of March, 1928, when said action was dismissed at the instance of said defendants and entirely abandoned and terminated, and this plaintiff was then and there discharged, and the said [3] defendants have deserted and abandoned the said prosecution and the said prosecution on said warrant and complaint herein mentioned is completely ended.

## 5.

That by reason of the aforesaid acts of defendants, plaintiff has suffered great humiliation and has been greatly degraded and disgraced in public opinion, that he has been obliged to neglect his business and employ counsel to prepare his defense, for all of which he has been damaged in the sum of \$16,000.00.

## 6.

That all the acts herein mentioned except the dismissal of the cause aforesaid were done maliciously, without probable cause, and in direct violation of defendants' oaths, duties and obligations as such public officers and constitute a breach and a

violation of the official bond of said United States Marshall, which bond provides: "If the said H. P. Sullivan, by himself and by his deputies, shall faithfully perform all the duties of the said office of Marshal, then this obligation to be void; otherwise, to remain in full force and virtue". A copy of said bond is hereto attached, marked EXHIBIT C, and made a part of this complaint.

## 7.

That the aforesaid acts of said defendants, and plaintiff's detention, arrest, and imprisonment thereby, were unlawful, malicious, oppressive, cruel, and without probable cause, ground, or reason therefor, and the said case of violation of the game laws was wholly false, malicious, and unfounded, and was then and there, at all times, well known, by each and all of said conspirators, to be false, malicious and unfounded.

WHEREFORE, plaintiff prays judgment against the above named defendants for the sum of sixteen thousand dollars, besides the [4] costs and disbursements herein incurred.

(sgd) L. D. ROACH

L. D. ROACH

ARTHUR FRAME

L. V. RAY

Attorneys for Plaintiff. [5]

United States of America  
Territory of Alaska  
Third Division—ss.

L. D. Roach, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the plaintiff in the above entitled action, that he makes this affidavit of verification for and on behalf of said plaintiff; that he has read the within and foregoing amended complaint; knows the contents thereof, and that he believes the same to be true; that he makes this affidavit of verification for and on behalf of said plaintiff for the reason that the plaintiff is not at Anchorage, Alaska, the place where this affidavit is made, or within one hundred miles thereof.

L. D. ROACH

Subscribed and sworn to before me this 26th day of December, 1930.

(Notarial Seal)

J. L. WALLER

Notary Public for Alaska. My Commission expires  
Feb. 17, 1934. [6]

## "EXHIBIT A"

In the United States Commissioner's Court for the  
Territory of Alaska

Third Division Kodiak Precinct at Kodiak

No. 282

United States of America

vs.

Otto Kraft

## COMPLAINT

For violation of Section 21 of the Alaska Game Law

OTTO KRAFT is accused by E. H. Boyer in this Complaint of the crime of Violation of Regulation 21 of the ALASKA GAME LAW committed as follows, to-wit:

THE SAID OTTO KRAFT in the Territory of Alaska, and within the jurisdiction of this Court, did, wilfully and unlawfully, on the 16th day of March, 1928, at Kodiak, Alaska, then and there being, then and there did refuse to allow E. H. Boyer Deputy U. S. Marshal, to inspect the books and records of his purchases of furs under his Fur Buyers Licence No. 1431, during the period from March 1st, 1928 to March 16, 1928, as required under the Alaska Game Law contrary to the form of the Statute in such case made and provided and against the peace and dignity of the United States of America.

E. H. BOYER



United States of America,  
Territory of Alaska—ss.

I, E. H. Boyer, being first duly sworn, depose  
and say that the foregoing complaint is true.

E. H. BOYER

Subscribed and sworn to before me this 16th  
day of March, 1928.

[Seal]

A. F. STOWE

U. S. Commissioner and Ex-Officio  
Justice of the Peace.

At Kodiak, Alaska. [7]

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“EXHIBIT B”

In the United States Commissioner’s Court for the  
Territory of Alaska  
Third Division, at Kodiak

United States of America  
Territory of Alaska—ss.

The President of the United States of America to  
the Marshal of the Third Division of the Terri-  
tory of Alaska, or his Deputy, Greeting:

We command you to apprehend forthwith, Otto  
Kraft Who is named in a complaint made on oath  
before me this 16th day of March, A. D. 1928, by  
E. H. Boyer if he be found in said District, for  
the crime of Violation of Regulation 21 of the  
Alaska Game Law as is more particularly set forth

in said complaint, and bring him before me to answer said complaint, and be further dealt with as the law directs.

HEREOF FAIL NOT, and make the return of this writ with your doings thereon.

Given under my hand and seal at Kodiak this 16th day of March, 1928.

[Seal]

A. F. STOWE

United States Commissioner and Ex-  
Officio Justice of the Peace. [8]

“EXHIBIT C”

BOND—U. S. MARSHALS.

(Corporation)

KNOW ALL MEN BY THESE PRESENTS:

That we, H. P. SULLIVAN as principal, and NATIONAL SURETY COMPANY, a corporation created and existing under the laws of the State of New York, as sureties, are held and firmly bound unto the UNITED STATES OF AMERICA in the full and just sum of Thirty-five thousand dollars, lawful money of the United States, to be paid to the United States; for which payment, well and truly to be made, the said H. P. Sullivan binds himself, his heirs, executors, administrators, and the said National Surety Company binds itself, its successors, and assigns, firmly by these presents.

Signed with our hands and sealed with our seals this 17th day of April in the year one thousand nine hundred and twenty-six.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH, That whereas, the President of the United States hath, pursuant to law, appointed the said H. P. Sullivan to be Marshal of the United States for the third division of the District of Alaska for the term of four years, commencing with the sixteenth day of February, 1926, as by a commission to him bearing date the sixteenth day of February, 1926, more fully appears.

NOW, THEREFORE, if the said H. P. Sullivan, by himself and by his Deputies, shall faithfully perform all the duties of the said office of Marshal, then this obligation to be void; otherwise, to remain in full force and virtue.

[Seal]

H. P. SULLIVAN

Principal

NATIONAL SURETY COMPANY

Surety

by Geo. J. Love

Its attorney in fact.

Signed, sealed, and delivered in the presence of

S. O. Casler

A. C. Dowling

As to Principal

S. O. Casler

A. C. Dowling

As to Surety. [9]

Attest

J. L. Reed

Attorney in fact for

National Surety Company

(Seal of National  
Surety Co.)

[Endorsed]: "Filed in the District Court, Territory of Alaska, Third Division. Apr 26 1926. W. N. Cuddy, Clerk by L. B. Millard Deputy"

[Noted on Back]: The within bond is approved as to tenor and form and sufficiency of sureties.

CECIL H. CLEGG

United States District Judge.

[District Court Seal] [10]

United States of America

Territory of Alaska

Third Division—ss:

I, L. D. Roach, being first duly sworn, on oath depose and say:

I am one of the attorneys for the plaintiff, O. Kraft; I am over the age of twenty-one years, a citizen of the United States and reside at Anchorage, Alaska. That the attorneys for the defendants, National Surety Company, a corporation, H. P. Sullivan, E. H. Boyer and A. F. Stowe, are J. L. Reed, W. N. Cuddy, and A. J. Dimond of the firm of Donohoe and Dimond; that the said J. L. Reed, W. N. Cuddy and A. J. Dimond reside at Valdez, Alaska; that at each of said places of residence, namely, Anchorage, Alaska, and Valdez, Alaska, is a United States Postoffice and between said places there is a regular service of the United States mail. That on the 26th day of December, 1930, I served the attached amended complaint upon the said J. L. Reed, W. N. Cuddy and A. J. Dimond by depositing in the post office at Anchorage,

Alaska, a full, true, and correct copy of the above-mentioned amended complaint, duly certified to be such true copy by me as one of the attorneys for the plaintiff, duly enclosed in envelopes with the postage prepaid thereon, and addressed as follows: Hon. J. L. Reed, Attorney at Law, Valdez, Alaska, Hon. W. N. Cuddy, United States Attorney, Valdez, Alaska,  
Hon. A. J. Dimond, Attorney at Law, Valdez, Alaska.

L. D. ROACH

Subscribed and sworn to before me this 26th day of December, 1930.

[Notarial Seal]

J. L. WALLER

Notary Public for Alaska. My commission expires Feb. 17, 1934.

[Endorsed]: Filed Dec. 26, 1930. [11]

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[Title of Court and Cause.]

SEPARATE ANSWER OF DEFENDANT NATIONAL SURETY COMPANY, A CORPORATION.

Comes now the above named defendant, National Surety Company, a corporation created and existing under the laws of the state of New York, appearing for itself only, in answer to plaintiff's amendment complaint herein, admits, denies and alleges as follows, to-wit:

## I.

Referring to Paragraph I of said amended complaint, defendant admits the same.

## II.

Referring to Paragraph II of said amended complaint, defendant admits the same.

## III.

Referring to Paragraphs III and IV of said amended complaint, defendant admits that the plaintiff has for many years resided at Kodiak, Alaska, where he is now and for a long time past has been engaged in the general merchandising business, including the buying and selling of furs; and defendant admits that true copies of the complaint and warrant in the criminal action therein described are annexed to said amended complaint and marked respectively Exhibit "A" and Exhibit "B". Defendant denies the remainder of [12] said paragraphs III and IV of said amended complaint, and defendant is informed and believes and therefore alleges the facts with reference to the subject matter of said Paragraphs to be as follows:

On and immediately prior to the 15th day of March, 1928, defendant E. H. Boyer was reliably informed that a certain person, an alien and not a citizen of the United States of America, then residing at Kodiak, had bought and sold, and was then engaged in the buying and selling of the skins of fur bearing animals at Kodiak, Alaska, without first hav-

ing obtained a license so to do as required by the provisions of the Alaska Game Law, and that said person had sold at least one of said skins of fur bearing animals to the plaintiff in this action with the full knowledge on the part of the plaintiff that said person had bought and sold and was then engaged in the buying and selling of the skins of fur bearing animals in violation of the Alaska Game Law, and that the skin so purchased by plaintiff had been purchased and was being sold to plaintiff in violation of said Alaska Game Law; that defendant E. H. Boyer honestly and in good faith and upon proper and sufficient cause believing that the Alaska Game Law was being violated by said person, requested the defendant A. F. Stowe to ask the plaintiff for an inspection of his records of the plaintiff's purchase of furs; that the defendant A. F. Stowe thereupon and on the 15th day of March, 1928, went to plaintiff's place of business and requested plaintiff's clerk to permit him, the defendant A. F. Stowe, to see and inspect the plaintiff's records of the furs purchased by plaintiff shortly before said 15th day of March, 1928; that plaintiff's clerk refused to permit defendant A. F. Stowe to inspect said records, and thereupon defendant A. F. Stowe departed from plaintiff's place of business; that on the morning of the 16th day of March, 1928, defendant A. F. Stowe reported to defendant E. H. Boyer that the plaintiff's [13] clerk had refused to permit defendant A. F. Stowe to see the record of the furs purchased by plaintiff.

That *Thereafter* and on the said 16th day of March, 1928, the defendant E. H. Boyer went to plaintiff's place of business in the town of Kodiak and requested that plaintiff allow him, the said defendant E. H. Boyer to inspect the records of the purchase of furs by plaintiff; that the plaintiff refused permission to said defendant E. H. Boyer to inspect the record of furs purchased by plaintiff and thereupon and at the request of the defendant E. H. Boyer, the plaintiff proceeded to the office of the defendant A. F. Stowe, who then was and for some time theretofore had been the United States Commissioner and Justice of the Peace for the Kodiak precinct in the Third Judicial Division, Territory of Alaska. Upon arriving at said office the defendant E. H. Boyer, then and at all times theretofore fully and in good faith believing that he had a right under the law to inspect upon demand or request the plaintiff's said record of furs purchased by plaintiff, filed and made oath to a complaint in a criminal action, copy of which is attached to and made a part of the plaintiff's amended complaint herein; that thereupon the defendant A. F. Stowe, as such Commissioner and Justice of the Peace, having read said complaint, and fully and honestly and in good faith believing said complaint to state a crime against the defendant named therein, who is the plaintiff in this action, issued under his hand and seal of said Court, a warrant for the arrest of the plaintiff herein and directed the same to the defendant E. H. Boyer; that the defendant E. H. Boyer thereupon having re-



ceived said warrant for the arrest of the plaintiff herein, and the same being valid and fair on its face, the defendant E. H. Boyer fully and honestly and in good faith believed that said complaint and said warrant were both valid and legal in all respects, and that it was his duty under the law and requirements of said warrant to [14] arrest the plaintiff herein; and that a short time after he had received said warrant and under and by virtue thereof, the defendant E. H. Boyer did arrest the plaintiff herein; that thereupon and within a very few minutes thereafter the plaintiff posted cash bail for his appearance in said criminal action and was thereupon released from custody, and the trial of said action at the request of the plaintiff was set for the following day, namely, March 17th, 1928, that thereafter the trial of said cause was postponed from time to time, and was finally dismissed upon the motion of the plaintiff in said criminal action, namely, the United States of America.

In the bringing and filing of said criminal action, and in the making of said arrest, said defendant E. H. Boyer and A. F. Stowe acted honestly and in good faith and in the belief that it was their duty to so act for the enforcement of the provisions of the Alaska Game Law; and defendant A. F. Stowe, in receiving for file said complaint in said criminal action, and in issuing said warrant thereon, acted as a judicial officer and in the performance of his judicial duties and within judicial authority and discretion imposed and conferred upon him by law; that

neither of said defendants at any time had or was actuated by any malice or ill-will against the plaintiff herein; and in truth and in fact on the said 16th day of March, 1928, and for a long time prior thereto, said defendants E. H. Boyer and A. F. Stowe entertained very friendly feelings towards the plaintiff, and did not wish to cause him any harm or injury whatever.

That the defendant H. P. Sullivan at the time of bringing and prosecution of said criminal action hereinabove mentioned, was not present in the town of Kodiak, Alaska, and had no knowledge or information of or concerning said action until some time after the 30th day of March, 1928; that if the defendant E. H. [15] Boyer did exceed his power and authority as deputy United States Marshal in arresting the plaintiff as hereinabove stated, the said defendant E. H. Boyer was not authorized so to do by the said defendant H. P. Sullivan, nor were his acts with respect thereto in any manner ratified or confirmed by defendant H. P. Sullivan; and that if the said defendant E. H. Boyer did exceed his power and authority as a deputy United States Marshal in making and signing the complaint in said criminal action, or in making the arrest of the plaintiff as hereinabove set out, the said E. H. Boyer then and in that event acted in a personal and individual capacity, and not by reason of his official position as a deputy United States Marshal.

That the defendant H. P. Sullivan neither on the 15th of 16th days of March, 1928, nor at any

other time has he borne or been actuated by any malice, ill-will or enmity towards the plaintiff, and in truth and fact has he at all times been, and now is, on the utmost good terms with the plaintiff herein, and has always in the past entertained, and does now entertain friendship and good will towards the plaintiff.

IV.

Referring to Paragraphs 5, 6 and 7 of said amended complaint, defendant denies the same and the whole thereof, except that a copy of the official bond referred to in Paragraph 6, is attached to said amended complaint, marked Exhibit "C".

V.

That the sum of five hundred (\$500.00) dollars is a reasonable sum to be allowed this defendant for its attorney's fee in the above entitled cause.

WHEREFORE, defendant prays that plaintiff's complaint be dismissed and that defendant recover its costs, [16] disbursements and a reasonable attorney's fee herein.

J. L. REED,

Attorney for defendant National Surety  
Company, a corporation.

United States of America,  
Territory of Alaska.—ss.

J. L. Reed, being first duly sworn, deposes and says:

I am the attorney of record for the defendant National Surety Company, a corporation, in the

above entitled action, and make this verification for and on behalf of said corporation, that this verification is made at Seward, Alaska, and for the reason that said defendant is a corporation and has neither officer or agent at Seward, Alaska, upon whom service of summons might be made or within one hundred miles thereof. I have read the foregoing answer, and know the contents thereof, and the same is true as I verily believe.

J. L. REED

Subscribed and sworn to before me this 11th day of July 1931.

[Notarial Seal]

RALPH REED,

Notary Public for Alaska.

My Commission expires Nov. 8, 1934.

[Endorsed]: Filed July 11th, 1931. [17]

United States of America,  
Territory of Alaska.—ss.

J. L. Reed, being first duly sworn, deposes and says:

That I am the attorney of record for the defendant National Surety Company, a corporation, named in the above entitled action, I reside at Seward, Alaska. That the attorneys for the plaintiff in said action are L. D. Roach, who resides at Anchorage, Alaska, and L. V. Ray, who resides at Seward, Alaska; that in each of said towns is a United States post office, and between said places there is a regular weekly service of United States mails.

That on the 11th day of July, 1931, I served the

hereto annexed separate answers of defendant National Surety Company, a corporation, by depositing in the United States Post Office at Seward, Alaska, a full, true and correct copy of said Answer, certified to be such copy by me as attorney for said defendant, duly enclosed in *a* envelope with the postage prepaid thereon, and addressed to the said L. D. Roach at Anchorage, Alaska, and at the same time I did in like manner mail a full, true and correct copy of said Answer, certified by me in like manner, to said L. V. Ray, addressed to him at Seward, Alaska.

J. L. REED

Subscribed and sworn to before me this 11th day of July, 1931.

[Notarial Seal]

RALPH REED,  
Notary Public for Alaska.

My commission expires Nov. 8, 1934.

[Endorsed]: Filed July 11, 1931. [18]

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[Title of Court and Cause.]

SEPARATE ANSWER OF DEFENDANT  
H. P. SULLIVAN.

Comes now the above named defendant H. P. Sullivan, and appearing for himself only and not for his co-defendants, in answer to the plaintiff's amended complaint herein, admits, denies, and alleges as follows, to-wit:

## I.

Referring to Paragraph I and II of said amended complaint, defendant admits the same.

## II.

Referring to Paragraph III and IV of said amended complaint, defendant admits that the plaintiff has for many years resided at Kodiak, Alaska, where he is now and for a long time past has been engaged in the general merchandising business, including the buying and selling of furs; and defendant admits that true copies of the complaint and warrant in the criminal action therein described are annexed to said amended complaint and marked respectively Exhibit "A" and Exhibit "B". Defendant denies the remainder of said Paragraphs III and IV of said amended complaint, and defendant is informed and believes and therefore alleges the facts with reference to the subject matter of said Paragraphs to be as follows: [19]

On and immediately prior to the 15th day of March, 1928, defendant E. H. Boyer was reliably informed that a certain person, an alien and not a citizen of the United States of America, then residing at Kodiak, had bought and sold, and was then engaged in the buying and selling of the skins of fur bearing animals at Kodiak, Alaska, without first having obtained a license so to do as required by the provisions of the Alaska Game Law, and that said person had sold at least one of said skins of fur bearing animals to the plaintiff in this action with the full knowledge on the part of the plaintiff

that said person had bought and sold and was then engaged in the buying and selling of the skins of fur bearing animals in violation of the Alaska Game Law, and that the skin so purchased by plaintiff had been purchased and was being sold to plaintiff in violation of said Alaska Game Law; that defendant E. H. Boyer honestly and in good faith and upon proper and sufficient cause believing that the Alaska Game Law was being violated by said person, requested the defendant A. F. Stowe to ask the plaintiff for an inspection of his records of the plaintiff's purchase of furs; that the defendant A. F. Stowe thereupon and on the 15th day of March, 1928, went to the plaintiff's place of business and requested plaintiff's clerk to permit him, the defendant A. F. Stowe, to see and inspect the plaintiff's records of the furs purchased by plaintiff shortly before said 15th day of March, 1928; that plaintiff's clerk refused to permit defendant A. F. Stowe to inspect said records, and thereupon defendant A. F. Stowe departed from plaintiff's place of business; that on the morning of the 16th day of March, 1928, defendant A. F. Stowe reported to defendant E. H. Boyer that the plaintiff's clerk had refused to permit defendant A. F. Stowe to see the record of the furs purchased by plaintiff.

Thereafter and on the said 16th day of March, 1928, the defendant E. H. Boyer went to plaintiff's place of business in [20] the town of Kodiak and requested that plaintiff allow him, the said defendant E. H. Boyer to inspect the records of the purchase of furs by plaintiff; that the plaintiff refused

permission to said defendant E. H. Boyer to inspect the record of furs purchased by plaintiff and thereupon and at the request of the defendant E. H. Boyer, the plaintiff proceeded to the office of the defendant A. F. Stowe, who then was and for some time theretofore had been the United States Commissioner and Justice of the Peace for the Kodiak precinct in the Third Judicial Division, Territory of Alaska. Upon arriving at said office the defendant E. H. Boyer, then and at all times theretofore fully and in good faith believing that he had a right under the law to inspect upon demand or request the plaintiff's said record of furs purchased by plaintiff, filed and made oath to a complaint in a criminal action, copy of which is attached to and made a part of the plaintiff's amended complaint herein; that thereupon the defendant A. F. Stowe, as such Commissioner and Justice of the Peace, having read said complaint, and fully and honestly and in good faith believing said complaint to state a crime against the defendant named therein, who is the plaintiff in this action, issued under his hand and seal of said court, a warrant for the arrest of the plaintiff herein and directed the same to the defendant E. H. Boyer; that the defendant E. H. Boyer thereupon having received said warrant for the arrest of the plaintiff herein, and the same being fair on its face, the defendant E. H. Boyer fully and honestly and in good faith believed that said complaint and said warrant were both valid and legal in all respects, and that it was his duty under said warrant to arrest the plaintiff herein; and



that a short time after he had received said warrant and under and by virtue thereof, the defendant E. H. Boyer did arrest the plaintiff herein; that thereupon and within a very few minutes thereafter the plaintiff posted cash bail for his appearance in [21] said criminal action and was thereupon released from custody, and the trial of said action at the request of the plaintiff was set for the following day, namely, March 17th, 1928, that thereafter the trial of said cause was postponed from time to time, and was finally dismissed upon the motion of the plaintiff in said criminal action, namely, the United States of America.

In the bringing and filing of said criminal action, and in the making of said arrest, said defendants E. H. Boyer and A. F. Stowe acted honestly and in good faith and in the belief that it was their duty to so act for the enforcement of the provisions of the Alaska Game Law; and defendant A. F. Stowe, in receiving for file said complaint in said criminal action, and in issuing said warrant thereon, acted as a judicial officer and in the performance of judicial duties and within the judicial authority and discretion imposed and conferred upon him by law; that neither of said defendants at any time had or was actuated by any malice or ill-will against the plaintiff herein; and in truth and in fact on the said 16th day of March, 1928, and for a long time theretofore, said defendants E. H. Boyer and A. F. Stowe entertained very friendly feelings toward the plaintiff, and did not wish to cause him any harm or injury whatever.

This answering defendant H. P. Sullivan further positively, and not upon information and belief avers that at the time of bringing and prosecution of said criminal action hereinabove mentioned, he was not present in the town or village of Kodiak, Alaska, and had no knowledge or information of or concerning said action until some time after the 30th day of March, 1928; that if the defendant E. H. Boyer did exceed his power and authority as deputy United States Marshal in arresting the plaintiff as hereinabove stated, the said defendant E. H. Boyer was not authorized so to do by this answering defendant H. P. Sullivan, nor were his acts with respect thereto in any manner ratified or confirmed [22] by defendant H. P. Sullivan; and that if the said defendant E. H. Boyer did exceed his power and authority as a deputy United States Marshal in making and signing the complaint in said criminal action, or in making the arrest of the plaintiff as hereinabove set out, the said E. H. Boyer then and in that event acted in a personal and individual capacity, and not by reason of his official position as a deputy United States Marshal.

This answering defendant H. P. Sullivan further positively avers that neither on the 15th or 16th days of March, 1928, nor at any other time has he borne or been actuated by any malice, ill-will, or enmity toward the plaintiff, and in truth and in fact this answering defendant H. P. Sullivan has at all times been, and now is, on the utmost good terms with the plaintiff herein, and has always in the past entertained, and does now entertain, senti-

ments of friendship and good will toward the plaintiff.

III.

Referring to Paragraphs 5, 6, and 7 of said amended complaint, defendant denies the same and the whole thereof, except that a copy of defendant's official bond is attached to said amended complaint, and is marked Exhibit "C".

WHEREFORE having fully answered herein, defendant prays that plaintiff's complaint be dismissed, and that defendant recover of plaintiff his costs and disbursements herein incurred.

W. N. CUDDY,  
DONOHOE & DIMOND,  
Attorneys for Defendant H. P. Sullivan. [23]

United States of America,  
Territory of Alaska—ss.

W. N. Cuddy, being first duly sworn upon his oath, says:

I am one of the attorneys for the defendant H. P. Sullivan, named in the above entitled action, and I make this affidavit for and on behalf of said defendant for the reason that said defendant is not present at Valdez, Alaska, or within one hundred miles thereof. I have read the foregoing answer, and know the contents thereof, and believe the same to be true.

W. N. CUDDY

Sworn to before me on this 8th day of July, 1931, in the town of Valdez, Third Division, Territory of Alaska.

[Seal]

ANTHONY J. DIMOND

Notary Public for Alaska. My Commission expires  
February 13, 1933. [24]

United States of America,  
Territory of Alaska—ss.

W. N. Cuddy, being first duly sworn upon his oath, says:

I am one of the attorneys for the defendant H. P. Sullivan, named in the above entitled action. I reside at Valdez, Alaska. The attorneys for the plaintiff in said action are L. D. Roach, who resides at Anchorage, Alaska, and L. V. Ray, who resides at Seward, Alaska. In each of said three places, namely Valdez, Alaska, Anchorage, Alaska, and Seward, Alaska, is a United States Post Office, and between said places there is a regular weekly service of United States mails.

On the 8th day of July, 1931, I served the hereto annexed separate answer of defendant H. P. Sullivan, by depositing in the United States Post Office at Valdez, Alaska, a full, true, and correct copy of said answer, certified to be such copy by me as one of the attorneys for said defendant, duly enclosed in an envelope with the postage prepaid thereon, and addressed to said L. D. Roach at Anchorage, Alaska, and at the same time I did

in like manner, mail a full, true and correct copy of said answer, certified by me in like manner, to said L. V. Ray, addressed to him at Seward, Alaska.

W. N. CUDDY

Subscribed and sworn to before me on this 8th day of July, 1931, in the town of Valdez, Third Division, Territory of Alaska.

[Notarial Seal]                      ANTHONY J. DIMOND  
Notary Public for Alaska. My Commission expires  
February 13, 1933.

[Endorsed]: Filed Jul. 8, 1931. [25]

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[Title of Court and Cause.]

SEPARATE ANSWER OF DEFENDANTS  
E. H. BOYER AND A. F. STOWE.

Come now the above named defendants, E. H. Boyer and A. F. Stowe and appearing for themselves only and not for their co-defendants, in answer to the plaintiff's amended complaint herein, admit, deny, and allege as follows, to-wit:

I.

Referring to Paragraph I of said amended complaint, defendants admit the same.

II.

Referring to Paragraph II of said amended complaint, defendants admit the same.

III.

Referring to Paragraphs III and IV of said amended complaint, defendants admit that the plain-

tiff has for many years resided at Kodiak, Alaska, where he is now and for a long time past has been engaged in the general mercantile business, including the buying and selling of furs; and defendants admit that true copies of the complaint and warrant in the criminal action therein described are annexed to said amended complaint and marked respectively Exhibit "A" and [26] Exhibit "B"; defendants deny the remainder of Paragraphs III and IV of said amended complaint, and allege the facts with reference to the subject matter of said Paragraphs to be as follows:

On and immediately prior to the 15th day of March, 1928, defendant E. H. Boyer was reliably informed that a certain person, an alien and not a citizen of the United States of America, then residing at Kodiak, had bought and sold, and was then engaged in the buying and selling of the skins of fur bearing animals at Kodiak, Alaska, without first having obtained a license so to do as required by the provisions of the Alaska Game Law, and that said person had sold at least one of said skins of fur bearing animals to the plaintiff in this action with the full knowledge on the part of the plaintiff that said person had bought and sold and was then engaged in the buying and selling of the skins of fur bearing animals in violation of the Alaska Game Law, and that the skin so purchased by plaintiff had been purchased and was being sold to plaintiff in violation of said Alaska Game Law; that defendant E. H. Boyer honestly and in good

faith and upon proper and sufficient cause believing that the Alaska Game Law was being violated by said person, requested the defendant A. F. Stowe to ask the plaintiff for an inspection of his records of the plaintiff's purchase of furs; that the defendant A. F. Stowe thereupon and on the 15th day of March, 1928, went to the plaintiff's place of business and requested plaintiff's clerk to permit him, the defendant A. F. Stowe, to see and inspect the plaintiff's records of the furs purchased by plaintiff shortly before said 15th day of March, 1928; that plaintiff's clerk refused to permit defendant A. F. Stowe to inspect said records, and thereupon defendant A. F. Stowe departed from plaintiff's place of business; that on the morning of the 16th day of March, 1928, defendant [27] A. F. Stowe reported to defendant E. H. Boyer that the plaintiff's clerk had refused to permit defendant A. F. Stowe to see the record of the furs purchased by plaintiff.

Thereafter and on the said 16th day of March, 1928, the defendant E. H. Boyer went to plaintiff's place of business in the town of Kodiak and requested that plaintiff allow him, the said defendant E. H. Boyer to inspect the records of the purchases of furs by plaintiff; that the plaintiff refused permission to said defendant E. H. Boyer to inspect the record of furs purchased by plaintiff and thereupon and at the request of the defendant E. H. Boyer, the plaintiff proceeded to the office of the defendant A. F. Stowe, who then was

and for some time theretofore had been the United States Commissioner and Justice of the Peace for the Kodiak precinct in the Third Judicial Division, Territory of Alaska. Upon arriving at said office the defendant E. H. Boyer, then and at all times theretofore fully and in good faith believing that he had a right under the law to inspect upon demand or request the plaintiff's said record of furs purchased by plaintiff, filed and made oath to a complaint in a criminal action, copy of which is attached to and made a part of the plaintiff's amended complaint herein; that thereupon the defendant A. F. Stowe, as such Commissioner and Justice of the Peace, having read said complaint, and fully and honestly and in good faith believing said complaint to state a crime against the defendant named therein, who is the plaintiff in this action, issued under his hand and seal of said Court, a warrant for the arrest of the plaintiff herein and directed the same to the defendant E. H. Boyer; that the defendant E. H. Boyer thereupon having received said warrant for the arrest of the plaintiff herein, and the same being fair on its face, the defendant E. H. Boyer fully and honestly and in good faith believed that said complaint and said warrant were both valid [28] and legal in all respects, and that it was his duty under said warrant to arrest the plaintiff herein; and that a short time after he had received said warrant and under and by virtue thereof, the defendant E. H. Boyer did arrest the plaintiff herein; that thereupon and within a very few minutes thereafter the plaintiff



posted cash bail for his appearance in said criminal action and was thereupon released from custody, and the trial of said action at the request of the plaintiff was set for the following day, namely, March 17th, 1928; that thereafter the trial of said cause was postponed from time to time, and was finally dismissed upon the motion of the plaintiff in said criminal action, namely, the United States of America.

In the bringing and filing of said criminal action, and in the making of said arrest, said defendants E. H. Boyer and A. F. Stowe acted honestly and in good faith and in the belief that it was their duty to so act for the enforcement of the provisions of the Alaska Game Law; and defendant A. F. Stowe, in receiving for file said complaint in said criminal action, and in issuing said warrant thereon, acted as a judicial officer and in the performance of judicial duties and within the judicial authority and discretion imposed and conferred upon him by law; that neither of said defendants at any time had or was actuated by any malice or ill-will against the plaintiff herein; and in truth and in fact on the said 16th day of March, 1928, and for a long time theretofore, said defendants E. H. Boyer and A. F. Stowe entertained very friendly feelings toward the plaintiff, and did not wish to cause him any harm or injury whatever.

#### IV.

Referring to Paragraphs 5, 6, and 7, of said amended complaint, defendants deny the same and

the whole thereof, except that a copy of the official bond of defendant H. P. Sullivan is attached to said amended complaint, and is marked [29] Exhibit "C".

WHEREFORE having fully answered herein, defendants pray that plaintiff's complaint be dismissed, and that defendants recover of plaintiff their costs and disbursement herein incurred.

W. N. CUDDY

Attorneys for Defendants

E. H. Boyer and A. F. Stowe. [30]

United States of America,  
Territory of Alaska—ss.

W. N. Cuddy, being first duly sworn upon his oath says:

I am one of the attorneys for defendants E. H. Boyer and A. F. Stowe, named in the above entitled action, and I make this affidavit for and on behalf of said defendants for the reason that neither of said defendants is present at Valdez, Alaska, or within one hundred miles thereof. I have read the foregoing answer, and know the contents thereof, and believe the same to be true.

W. N. CUDDY.

Sworn to before me on this 8th day of July, 1931, in the town of Valdez, Third Division, Territory of Alaska.

[Seal]

ANTHONY J. DIMOND,

Notary Public for Alaska.

My Commission expires February 13, 1933. [31]

United States of America,  
Territory of Alaska—ss.

W. N. Cuddy, being first duly sworn upon his oath, says:

I am one of the attorneys for the defendants E. H. Boyer and A. F. Stowe, named in the above entitled action. I reside at Valdez, Alaska. The attorneys for the plaintiff in said action are L. D. Roach, who resides at Anchorage, Alaska, and L. V. Ray, who resides at Seward, Alaska. In each of said three places, namely Valdez, Alaska, Anchorage, Alaska, and Seward, Alaska, is a United States Post Office, and between said places there is a regular weekly service of United States mails.

On the 8th day of July, 1931, I served the hereto annexed separate answers of defendants E. H. Boyer and A. F. Stowe, by depositing in the United States Post Office at Valdez, Alaska, a full, true, and correct copy of said answer, certified to be such copy by me as one of the attorneys for said defendants, duly enclosed in an envelope with the postage prepaid thereon, and addressed to said L. D. Roach at Anchorage, Alaska, and at the same time I did in like manner mail a full, true, and correct copy of said answer, certified by me in like manner, to said L. V. Ray, addressed to him at Seward, Alaska.

W. N. CUDDY.

Subscribed and sworn to before me on this 8th day of July, 1931, in the town of Valdez, Third Division, Territory of Alaska.

[Notarial Seal] ANTHONY J. DIMOND,  
Notary Public for Alaska.

My Commission expires February 13, 1933.

[Endorsed]: Filed Jul. 8, 1931. [32]

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[Title of Court and Cause.]

DEMURRER TO SEPARATE ANSWER OF NATIONAL SURETY COMPANY, A CORPORATION.

Plaintiff demurs to the separate answer of the defendant National Surety Company, a corporation, in that it appears upon the face of said answer that the same does not state facts sufficient to constitute a defense to the cause of action stated in the amended complaint of the plaintiff.

L. D. ROACH and L. V. RAY,  
Attorneys for Plaintiff.

Receipt of copy and service admitted this 28th day of July, 1931.

J. L. REED,  
Attorney for National Surety Company, a corporation, one of defendants above named.

[Endorsed]: Filed Aug 1, 1931. [33]

[Title of Court and Cause.]

DEMURRER TO SEPARATE ANSWER OF  
DEFENDANT H. P. SULLIVAN.

Plaintiff demurs to the separate answer of the defendant H. P. Sullivan, in that it appears upon the face of said answer that the same does not state facts sufficient to constitute a defense to the cause of action stated in the amended complaint of the plaintiff.

L. D. ROACH and L. V. RAY,  
Attorneys for Plaintiff.

Receipt of copy and service admitted this ..... day  
of July, 1931.

.....,  
of Attorneys for the Defendant H.  
P. Sullivan.

[Endorsed]: Filed Aug 1, 1931. [34]



[Title of Court and Cause.]

DEMURRER TO SEPARATE ANSWER OF  
THE DEFENDANTS E. H. BOYER AND  
A. F. STOWE.

Plaintiff demurs to the separate answer of the defendants E. H. Boyer and A. F. Stowe, in that it appears upon the face of their said answer that the same does not state facts sufficient to constitute a

defense to the cause of action stated in the amended complaint of the plaintiff.

L. D. ROACH and L. V. RAY,  
Attorneys for Plaintiff.

Receipt of copy and service admitted this .....  
day of July, 1931.

.....,  
of Attorneys for the Defendants E.  
H. Boyer and A. F. Stowe.

[Endorsed]: Filed Aug 1, 1931. [35]

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[Title of Court and Cause.]

**M. O. OVERRULING DEMURRER.**

The Court having heretofore heard argument of counsel on the Demurrers heretofore filed herein, and being fully advised in the premises,

DOES HEREBY ORDER that said Demurrers be, and the same hereby are, overruled.

[Endorsed]: Entered Court Journal No. A-6.  
Page No. 72. Sep. 23, 1931. [36]

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[Title of Court and Cause.]

**REPLY TO SEPARATE ANSWER OF DEFENDANT NATIONAL SURETY COMPANY.**

Comes now plaintiff above named and in reply to the answer of the Defendant National Surety Com-

pany and to the matters contained in paragraph three thereof:

Plaintiff denies that in the bringing and filing of said criminal action and in the making of the arrest of plaintiff the defendants Boyer and Stowe acted honestly and in good faith and in the belief that it was their duty to so act for the enforcement of the provisions of the Alaska Game Law.

Denies that on the 16th day of March, 1928, and for a long time prior thereto the said defendants or any of them had entertained very friendly feelings towards the plaintiff, but alleges that the arrest of said plaintiff on said day was the culmination of a series of persecutions by defendants towards said plaintiff.

Denies each and every other allegation, matter and thing in said paragraph 3 contained not otherwise admitted by the allegations of plaintiff's amended complaint.

Denies that the sum of \$500.00 or any other sum is a reasonable amount to allow defendant as an attorney's fee.

Wherefore, plaintiff prays for judgment as in his complaint and that defendants take nothing by their said defense.

L. D. ROACH,  
ARTHUR FRAME,  
L. V. RAY,  
Attorneys for Plaintiff. [37]

United States of America,  
Territory of Alaska, Third Division—ss.

L. D. Roach, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the plaintiff in the above entitled action, that he makes this affidavit of verification for and on behalf of said plaintiff; that he has read the foregoing reply; knows the contents thereof, and that he believes the same to be true; that he makes this affidavit of verification for and on behalf of said plaintiff for the reason that the plaintiff is not at Valdez, Alaska, the place where this affidavit is made, nor within the Territory of Alaska.

L. D. ROACH,

Subscribed and sworn to before me this 22nd day of November, 1933.

[Notarial Seal]

GEO. J. LOVE,

Notary Public in and for Alaska.

My Commission expires Nov. 25, 1934.

Service of the foregoing reply and receipt of a copy thereof is hereby admitted this 22nd day of November, 1933.

J. L. REED,

Attorney for Natl. Surety Co.

[Endorsed]: Filed Nov. 22, 1933. [38]



[Title of Court and Cause.]

REPLY TO SEPARATE ANSWER OF DEFENDANT H. P. SULLIVAN.

Comes now the plaintiff above named and in reply to the answer of the Defendant H. P. Sullivan and to the matters contained in paragraph 2 thereof:

Plaintiff denies that in the bringing and filing of said criminal action and in the making of the arrest of plaintiff the defendants Boyer and Stowe acted honestly and in good faith and in the belief that it was their duty to so act for the enforcement of the provisions of the Alaska Game Law.

Denies that on the 16th day of March, 1928, and for a long time prior thereto the said defendants or any of them had entertained very friendly feelings towards the plaintiff, but alleges that the arrest of said plaintiff on said day was the culmination of a series of persecutions by defendants towards said plaintiff.

Denies each and every other allegation, matter and thing in said paragraph 2 contained not otherwise admitted by the allegations of plaintiff's amended complaint.

Wherefore, plaintiff prays for judgment as in his complaint and that defendants take nothing by their said defense.

L. D. ROACH.

ARTHUR FRAME.

L. V. RAY,

Attorneys for Plaintiff. [39]

United States of America,  
Territory of Alaska,  
Third Division.—ss.

L. D. Roach, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the plaintiff in the above entitled action; that he makes this affidavit of verification for and on behalf of said plaintiff; that he has read the foregoing reply; knows the contents thereof, and that he believes the same to be true; that he makes this affidavit of verification for and on behalf of said plaintiff for the reason that the plaintiff is not at Valdez, Alaska, the place where this affidavit is made, nor within the Territory of Alaska.

L. D. ROACH

Subscribed and sworn to before me this 22nd day of November, 1933.

[Seal]

GEO. J. LOVE

Notary Public in and for Alaska.

My commission expires Nov. 25, 1934.

Service of the foregoing reply and receipt of a copy thereof is hereby admitted this 22nd day of Nov. 1933.

J. W. KEHOE

Atty. for defts. Sullivan, Boyer & Stowe.

[Endorsed]: Filed Nov. 22, 1933. [40]

[Title of Court and Cause.]

REPLY TO SEPARATE ANSWER OF  
DEFENDANTS E. H. BOYER and A. F. STOWE

Comes now the plaintiff above named and in reply to the answer of the Defendants E. H. Boyer and A. F. Stowe and to the matters contained in paragraph 3 thereof:

Plaintiff denies that in the bringing and filing of said criminal action and in the making of the arrest of plaintiff the defendants Boyer and Stowe acted honestly and in good faith and in the belief that it was their duty to so act for the enforcement of the provisions of the Alaska Game Law.

Denies that on the 16th day of March, 1928, and for a long time prior thereto the said defendants or any of them had entertained very friendly feelings towards the plaintiff, but alleges that the arrest of said plaintiff on said day was the culmination of a series of persecutions by defendants towards said plaintiff.

Denies each and every other allegation, matter and thing in said paragraph 3 contained not otherwise admitted by the allegations of plaintiff's amended complaint.

Wherefore, plaintiff prays for judgment as in his complaint and that defendants take nothing by their said defense.

L. D. ROACH  
ARTHUR FRAME  
L. V. RAY  
Attorneys for plaintiff. [41]

United States of America,  
Territory of Alaska,  
Third Division.—ss.

L. D. Roach, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the plaintiff in the above entitled action, that he makes this affidavit of verification for and on behalf of said plaintiff; that he has read the foregoing reply; knows the contents thereof, and that he believes the same to be true; that he makes this affidavit of verification for and on behalf of said plaintiff for the reason that the plaintiff is not at Valdez, Alaska, the place where this affidavit is made, nor within the Territory of Alaska.

L. D. ROACH

Subscribed and sworn to before me this 22nd day of November, 1933.

[Notarial Seal]

GEO. J. LOVE

Notary Public in and for Alaska.

My commission expires Nov. 25, 1934.

Service of the foregoing reply and receipt of a copy thereof is hereby admitted this 22nd day of November, 1933.

J. W. KEHOE

of Attys. for Sullivan, Stowe & Boyer

[Endorsed]: Filed Nov. 22, 1933. [42]

[Title of Court and Cause.]

MOTION FOR JUDGMENT ON PLEADINGS.

Come now the defendants herein and respectfully move this Honorable Court for judgment upon the pleadings in the above-entitled cause upon the ground and for the reason that the plaintiff has failed to reply or otherwise answer or plead to the affirmative allegations set forth in each of the Separate Answers of said defendants on file herein or to any of them.

This motion is based upon the record and files herein.

J. W. KEHOE

United States Attorney and attorneys  
for H. P. Sullivan, E. H. Boyer  
and A. F. Stowe, defendants.

J. L. REED

Attorney for National Surety Company,  
defendant.

Service of the foregoing Motion for Judgment on the Pleadings by receipt of a copy thereof is hereby acknowledged this 22nd day of November, 1933.

ARTHUR FRAME

One of the Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 22, 1933. [43]

In the District Court for the Territory of Alaska,  
Third Division.

No. 1387

O. KRAFT,

Plaintiff,

vs.

NATIONAL SURETY CO., a corporation, H. P.  
SULLIVAN, E. H. BOYER, and A. F.  
STOWE,

Defendants.

### JUDGMENT.

This matter coming on regularly for hearing on the 23rd day of November 1933, on the motion of the defendants for judgment on the pleadings, the plaintiff being represented by his attorneys Arthur Frame, Esq., and L. D. Roach, Esq., and the defendant, National Surety Co., a corporation, being represented by its attorney, J. L. Reed, Esq., and the defendants H. P. Sullivan, E. H. Boyer and A. F. Stowe being represented by J. W. Kehoe, Esq., United States Attorney for the Third Division of the Territory of Alaska; and the Court having heard the arguments of counsel both for and against said motion it appearing to the court therefrom and from an inspection of the Amended Complaint and answers of the several defendants filed in said cause, that the plaintiff has failed to reply to the new matter and affirmative defense set forth in the answers of defendants, which new matter and affirmative allegations constitute a de-

fense to said action; and the matter of the granting of said motion having been submitted to the Court after argument, and testimony having been submitted by the Court as to what constitutes a reasonable attorney fee for the defendant National Surety Co., a corporation, the Court being fully advised in the premises,

IT IS HEREBY ORDERED, that the Motion of the defendants, National Surety Co., a corporation, H. P. Sullivan, E. H. Boyer [44] and A. F. Stowe, in favor of said defendants for judgment on the pleadings, be and the same is hereby granted, and it is therefore

ORDERED, ADJUDGED AND DECREED that the defendants do have of and recover from plaintiff judgment for their costs and disbursements of action, taxed by the Clerk in the sum of Three Hundred Sixty-seven and 10/100 (\$367.10) Dollars, and for the sum of Three Hundred (\$300.00) Dollars as Attorney's fee for the defendant, National Surety Co., a corporation.

Dated this 25th day of November, 1933.

CECIL H. CLEGG

District Judge.

[Endorsed]: Filed Nov. 25, 1933.

Entered Court Journal No. 17, Page No. 444,  
Nov. 25, 1933. [45]

[Title of Court and Cause.]

PETITION OF O. KRAFT, PLAINTIFF, FOR  
APPEAL TO THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT.

The above named plaintiff, O. Kraft, conceiving himself aggrieved by the judgment made and entered in this cause on the 23rd day of November, 1933, does hereby appeal from the said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made and judgment made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Dated this 10th day of February, 1934.

(sgd) L. D. ROACH,  
(sgd) ARTHUR FRAME,  
(sgd) L. V. RAY,  
Attorneys for Plaintiff Appellant.

Due service and receipt of copy acknowledged this 20th day of February, 1934.

J. L. REED,  
Attorney for defendant appellee  
National Surety Company, a cor-  
poration.

J. W. KEHOE,  
Attorney for defendants appellees  
H. P. Sullivan, E. H. Boyer and  
A. F. Stowe.

[Endorsed]: Filed Feb. 20, 1934. [46]



[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the plaintiff above named, being the appellant herein, and assigns the following errors as having been committed by the Court in the proceedings of the above entitled action, which errors the said plaintiff intends to and does rely upon on his appeal to be prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit:

1.

The Court erred in overruling the demurrer of plaintiff to the separate answers of the defendants herein for the reason that the said answers do not state facts sufficient to constitute a defense to the cause of action and do not comply with the requirements of Section 895, Compiled Laws of Alaska.

2.

The court erred in granting defendants' motion for judgment on the pleadings.

3.

The court erred in entering judgment on the pleadings herein because the case was at issue and should have been submitted to a jury.

Wherefore the said appellant, O. Kraft, prays that the said order and judgment may be reversed and that this Court shall grant the relief prayed for in plaintiff's amended complaint in the District

Court for the Territory of Alaska, Third Division.

(sgd) L. D. ROACH,

(sgd) ARTHUR FRAME,

(sgd) L. V. RAY,

Attorneys for Appellant.

Due service and receipt of copy acknowledged this 17th day of February, 1934.

J. W. KEHOE,

Atty. for Sullivan, Boyer & Stowe.

J. L. REED,

Atty. for National Surety Co.

[Endorsed]: Filed Feb. 20, 1934. [47]

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[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

This day came O. Kraft, the plaintiff in the above-entitled action, and presented his petition for an appeal and assignment of errors accompanying the same, which petition on consideration of the Court is hereby allowed and the Court allows an appeal to the United States Circuit Court of Appeals for the Ninth Circuit upon the filing of a bond in the sum of seven hundred and fifty dollars, with good and sufficient surety to be approved by the Court, which shall operate as a cost and supersedeas bond.

Done at Valdez, Alaska this 21st day of February, 1934.

CECIL H. CLEGG

Judge of the District Court.

[Endorsed]: Filed Feb. 21, 1934.

Entered Court Journal No. 17. Page No. 468.

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, O. Kraft, as principal, and Ben Kraft and Ed Bensen, as sureties, are held and firmly bound unto National Surety Co., H. P. Sullivan, E. H. Boyer and A. F. Stowe, defendants above named in the sum of \$750.00 to be paid to the said National Surety Co., H. P. Sullivan, E. H. Boyer and A. F. Stowe, their heirs, executors, administrators, successors and/or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this 12 day of February, 1934.

Whereas, the above-named plaintiff has taken an appeal to the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, to reverse the judgment rendered against him in the above entitled action by the District Court for the Territory of Alaska, Third Division, which judgment was so rendered and entered by said court on the 25th day of November, 1933, for the sum of \$667.10, costs.

Now, therefore, the condition of the above obligation is such that if the above named O. Kraft shall prosecute his appeal to effect, and shall answer all costs and damages, if he shall fail to make good his plea, then this obligation to be void; other-

wise to remain in full force and effect.

OTTO KRAFT [Seal]

Principal

BEN KRAFT [Seal]

Surety

ED BENSEN [Seal]

Surety. [49]

United States of America

Territory of Alaska

Third Division—ss.

Ben Kraft and Ed Bensen, being first duly sworn, on oath depose and say each for himself: I am one of the sureties on the foregoing bond; I am a resident of the District or Territory of Alaska, but no counsellor or attorney at law, marshal, commissioner, clerk of any court, or other officer of any court; I am qualified to be bail, and I am worth the sum of \$750.00 specified in the foregoing undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities.

BEN KRAFT

ED BENSEN

Subscribed and sworn to before me this 12th day of February, 1934.

[Seal]

NORMAN NOBLE

Notary Public in and for Alaska. My commission expires July 14, 1935.

The foregoing bond is approved this 21st day of February, 1934.

CECIL H. CLEGG  
District Judge.

O. K.

J. L. REED

Attorney for National Surety Co.

J. W. Kehoe by J. L. Reed [50]

[Endorsed]: Filed Feb. 20, 1934. [51]

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[Title of Court and Cause.]

CITATION

To National Surety Company, a corporation, H. P. Sullivan, E. H. Boyer and A. F. Stowe, Defendants and Appellees, and to their attorneys, J. W. Kehoe, J. L. Reed, and Donohoe & Diamond:

You, and each of you, are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, California, in said Circuit, within thirty (30) days from the date hereof pursuant to an order allowing an appeal entered in the Clerk's office in the District Court for the Territory of Alaska, Third Division, at Valdez, in that certain action wherein O. Kraft was plaintiff and National Surety Company, a corporation, H. P. Sullivan, E. H. Boyer, and A. F. Stowe were defendants, and

wherein O. Kraft is appellant, to show cause, if any there be, why the final judgment rendered therein against the plaintiff, O. Kraft, appellant, on the 23rd day of November, 1933, shall not be reversed and corrected, and why speedy justice should not be done to him, said O. Kraft, appellant, in that behalf.

Witness the Honorable Cecil H. Clegg, Judge of the District Court for the Territory of Alaska, Third Division, and the seal of said Court hereunto affixed this 21st day of February, 1934.

CECIL H. CLEGG

Judge of the District Court for the  
Territory of Alaska, Third Division.

Attest:

[Seal] ROB'T. W. TAYLOR,  
Clerk of said court,  
By A. M. Dolan  
Deputy.

Due service and a copy hereof acknowledged this 21st day of February, 1934.

J. L. REED

Attorney for National Surety  
Company,

J. W. KEHOE by J. L. REED,

Attorney for Sullivan, Boyer &  
Stowe, Appellees.

[Endorsed]: Filed Feb. 21, 1934. [52]

[Title of Court and Cause.]

NOTICE OF APPEAL

To National Surety Company, a corporation, H. P. Sullivan, E. H. Boyer, and A. F. Stowe, appellees, and/or J. W. Kehoe, J. L. Reed, and Donohoe & Dimond, attorneys for said appellees.

You and each of you will please take notice that O. Kraft, plaintiff in above entitled cause hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the order and judgment entered in the above-entitled action on the 23rd day of November, 1933, and that the certified transcript of record will be filled in the said Appellate Court within thirty days from the filing of this notice.

(sgd) L. D. ROACH,

(sgd) ARTHUR FRAME,

(sgd) L. V. RAY,

Attorneys for Appellant.

Due service and receipt of a copy hereof is admitted this 17th day of February, 1934.

J. W. KEHOE

Attorney for Sullivan, Boyer & Stowe

J. L. REED

Attorney for National Surety Co.

[Endorsed]: Filed Feb. 20, 1934. [53]

**[Title of Court and Cause.]**

## PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court for the Territory  
of Alaska, Third Division.

You will please prepare and transmit to the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California, in connection with the appeal of O. Kraft, appellant, copies of the following pleadings, papers, and documents herein:

1. Plaintiff's amended complaint with exhibits.
2. Separate answer of defendant National Surety Company.
3. Separate answer of defendant H. P. Sullivan.
4. Separate answer of defendants E. H. Boyer and A. F. Stowe.
5. Plaintiff's demurrer to separate answer of National Surety Co.
6. Plaintiff's demurrer to separate answer of H. P. Sullivan.
7. Plaintiff's demurrer to separate answer of E. H. Boyer and A. F. Stowe.
8. Minute order overruling demurrers to above named answers and date.
9. Plaintiff's reply to separate answer of National Surety Co.
10. Plaintiff's reply to separate answer of H. P. Sullivan.
11. Plaintiff's reply to separate answer of E. H. Boyer and A. F. Stowe.



12. Defendant's motion for judgment on the pleadings.
13. Judgment.
14. Petition for appeal.
15. Assignment of errors.
16. Order allowing appeal.
17. Bond on appeal.
18. Citation on appeal.
19. Notice of appeal.
20. This praecipe.
21. Stipulation re printing transcript of record.
22. Minute order transferring cause to Valdez docket. [54]

Dated this 21st day of February, 1934.

(sgd) L. D. ROACH,

(sgd) ARTHUR FRAME,

(sgd) L. V. RAY,

Attorneys for Appellant.

Due service and receipt of a copy hereof is admitted this 17th day of February, 1934.

J. L. REED

Attorney for National Surety Company

J. W. KEHOE

Attorney for Sullivan, Boyer & Stowe

[Endorsed]: Filed Feb. 21, 1934. [55]

[Title of Court and Cause.]

STIPULATION RE PRINTING TRANSCRIPT

It is stipulated between the attorneys for the parties respectively that in printing the record in this case for use in the United States Circuit Court of Appeals, Ninth Circuit, all captions shall be omitted after the title of the cause has once been printed, and the words "Caption and title" and the name of the paper or document shall be substituted therefor. All other parts of the record shall be printed.

Dated this 10th day of February, 1934.

L. D. ROACH

ARTHUR FRAME (R)

L. V. RAY

Attorneys for Appellant.

J. L. REED

Attorney for Appellee National Surety Co.

J. W. KEHOE

Attorney for Appellees H. P. Sullivan,  
E. H. Boyer and A. F. Stowe.

[Endorsed]: Filed Feb. 21, 1934. [56]

[Title of Court and Cause.]

HEARING ON MOTION TO TRANSFER  
CAUSE TO VALDEZ DOCKET.

Now on this day came A. J. Dimond, Esq., one of the attorneys for the above-named defendants, H. P. Sullivan, E. H. Boyer and A. F. Stowe; comes

also L. V. Ray, Esq., one of the attorneys for the above-named plaintiff, O. Kraft;

WHEREUPON argument was had by respective counsel on defendants' motion for an order transferring the above-entitled cause to the Valdez Docket for trial at Valdez, Alaska;

WHEREUPON, after argument, the Court ordered that this cause be put on the Valdez Docket for trial at Valdez, Alaska reserving the right to the plaintiff to further move for a transfer to some other place for trial.

Entered Court Journal No. A-6, Page No. 174,  
May 20, 1932. [57]

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CERTIFICATE OF CLERK OF DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Territory of Alaska,  
Third Division.—ss.

I, ROB'T. W. TAYLOR, Clerk of the District Court, Territory of Alaska, Third Division, do hereby certify that the foregoing, consisting of 57 pages, constitutes a full, true and correct transcript of the record on appeal in cause No. 1387, entitled O. Kraft, Plaintiff, vs. National Surety Company, a corporation, H. P. Sullivan, E. H. Boyer and A. F. Stowe, Defendants, and was made pursuant to and in accordance with the praecipe of the Plaintiff, filed in this action, and by virtue of the said Appeal and Citation issued in said cause, and is the return thereof in accordance therewith, and I certify that the Citation on Appeal is the original thereof

And I do further certify that the Index thereof, consisting of page number i, is a correct index of said Transcript of Record, and that the list of attorneys, as shown on page ii, is a correct list of the attorneys of record.

I further certify that the foregoing transcript has been prepared, examined and certified to by me and the cost thereof, amounting to \$14.55, was paid to me by L. D. Roach, one of the attorneys for the plaintiff and appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 28th day of February, 1934.

ROBT. W. TAYLOR

Clerk of the District Court,  
Territory of Alaska,  
Third Division. [58]

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[Title of Court and Cause.]

DEMURRER TO AMENDED COMPLAINT.

Comes now the defendant National Surety Company, a corporation, in the above-entitled action and demurs to the Amended Complaint of the plaintiff on file herein upon the ground that it appears upon the face thereof that said amended complaint does not state facts sufficient to constitute *and* cause of action.

J. L. REED

Attorney for defendant National Surety  
Company, a corporation.

[Endorsed]: Filed Jan. 15, 1931. [62]

[Title of Court and Cause.]

MOTION FOR BILL OF PARTICULARS  
DEMURRER TO AMENDED COMPLAINT.

Now at this time this matter came on regularly for hearing upon the Motion of defendants for a Bill of Particulars, defendants H. P. Sullivan, E. F. Boyer and A. F. Stowe being represented by A. J. Dimond, Esq., and upon the Demurrer of the National Surety Company to the Amended Complaint, said corporation being represented by J. L. Reed, Esq.,

WHEREUPON argument was had and the Court being fully advised in the premises, defendants' Motion for Bill of Particulars and Demurrer were overruled, to which rulings of the Court exceptions were allowed and taken. Defendants were granted twenty days in which to answer.

Entered Court Journal A-6, Page 29.

June 22, 1931. [63]

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[Title of Court and Cause.]

COUNTER-PRAECIPE FOR TRANSCRIPT  
OF RECORD.

To the Clerk of the District Court for the Territory of Alaska, Third Division:

You will please prepare, certify and transmit to the United States Circuit Court of Appeals for the Ninth Circuit, San Francisco, California, in connection with the appeal of O. Kraft, appellant, vs.

National Surety Company, a corporation, H. P. Sullivan, E. H. Boyer and A. F. Stowe, appellees, copies of the following pleadings, papers and documents herein:

- (a) Defendant National Surety Company's demurrer to plaintiff's amended complaint.
- (b) Minute order overruling demurrer of the defendant National Surety Company to plaintiff's amended complaint.

Dated at Valdez, Alaska, this 21st day of February, 1934.

J. L. REED

Attorney for defendant National Surety Company, a corporation, Appellee.

Service of the foregoing Counter-Praecipe for Transcript of Record is hereby accepted by receipt of a copy thereof this 21st day of February, 1934.

L. D. ROACH

One of the Attorneys for Appellant.

ROB'T. W. TAYLOR,

Clerk for

J. W. KEHOE,

Attorney for Sullivan, Boyer and Stowe, Appellees.

[Endorsed]: Filed Feb. 21, 1934. [64]

CERTIFICATE OF CLERK OF DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Territory of Alaska,  
Third Division.—ss.

I, ROB'T. W. TAYLOR, Clerk of the District Court, Territory of Alaska, Third Division, do hereby certify that the foregoing, consisting of 3 pages, constitutes a full, true and correct transcript of the record on appeal in cause No. 1387, entitled O. Kraft, Plaintiff, vs. National Surety Company, a corporation, H. P. Sullivan, E. H. Boyer and A. F. Stowe, Defendants, and was made pursuant to and in accordance with the counter-praecipe of the Defendant National Surety Company, a corporation, filed in this action.

And I do further certify that the Index thereof, consisting of page number i, is a correct index of said Transcript of Record, and that the list of attorneys, as shown on page ii, is a correct list of the attorneys of record.

I further certify that the foregoing transcript has been prepared, examined and certified to by me and the cost thereof, amounting to \$1.70, was paid to me by J. L. Reed, attorney for the defendant National Surety Company, a corporation, and one of the appellees herein.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said Court this 28th day of February, 1934.

ROBT. W. TAYLOR

Clerk of the District Court,  
Territory of Alaska,  
Third Division. [65]

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[Endorsed]: No. 7426. United States Circuit Court of Appeals for the Ninth Circuit. O. Kraft, Appellant, vs. National Surety Company, a corporation, H. P. Sullivan, E. H. Boyer and A. F. Stowe, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Alaska, Third Division.

Filed March 13, 1934.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.